

LABOUR DEPARTMENT

The 4th February, 1982

No. 9(1)82-Lab./960.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Faridabad Central Co-operative Consumer's Stores Ltd., Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 65 of 1979

Between

SHRI SITA RAM WORKMAN AND THE MANAGEMENT OR M/S. FARIDABAD CENTRAL
CO-OPERATIVE CONSUMER'S STORES LTD., FARIDABAD.

AWARD

By order No. II/6428, dated 16th February, 1979 the Governor of Haryana referred the following dispute between the management of M/s. Faridabad Central Co-operative Consumer's Stores Ltd., Faridabad and its man Shri Sita Ram, to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Sita Ram was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties issues were framed on 3rd September, 1979:—

1. Whether the management is not an industry?
2. Whether the workman has done any wrong and taking advantage of that wrong?
3. Whether the termination of services of Shri Sita Ram was justified and in order? If not, to what relief is he entitled?

The management was proceeded *ex parte* and an *ex parte* award was passed on 21st March, 1980 but the same was set aside,—*vide* order dated 29th July, 1980 and the management was called upon to adduce evidence. The management examined Shri D.C. Kapoor, Assistant Accountant as MW-1 and closed their case. Statement of the workman concerned was recorded on commission. Arguments were heard. I now give my finding issuewise:

Issue No. 7.—The management is Faridabad Central Co-operative Consumer's Stores. It is matter of common knowledge that Consumer's stores are engaged into business of sale and essential commodities to the general public. Undoubtedly activities are commercial. It is held by the Hon'ble the Supreme Court in Bangalore Water Supply and Sewerage Board case reported in 1978 LLI page J 394 that a systematic activity by the corporation between the employer and employee and engaged in production or distribution of goods and service calculated to satisfy human wants and wishes. If these tests are satisfied *prima facie* there is an industry. The activity of co-operative consumer store is fully covered by this test. Therefore, it is an industry as defined in section 2(j) of the Industrial Disputes Act. This issue is decided against the management.

Issue No. 2.—No evidence was led by the management, therefore, this issue is decided against the management.

Issue No. 3.—MW-1 stated that there had been a settlement copy EX. M-1 between the management and the workman. The workman had submitted fitness certificate Ex. M2 in compliance of the settlement. He had reported for duty,—*vide* Ex. M-3. The management had issued letter copy Ex. M-4 to the workman which also bears the signature of the workman. Letter Ex. M-5 was issued to him for duty and Ex. M-6 posting order. A complaint of sales Incharge copy EX. M-7 was received that the workman had not reported for duty. The remarks of the General Manager appeared in red circle. Letter Ex. M-8 was sent to the workman. We did not produce certificate from Chief Medical Officer. His services were terminated,—*vide* Ex. M-9. The age of the workman was 75 years. His eyesight was weak and his body feeble. He was unfit for duty. In cross-examination he replied that the workman was not removed from service for the reason of his being unfit for duty. He had no proof of the age of the workman. He had told the same by guess. Store was covered E.S.I. scheme from 1977. Store has many branches in Faridabad. The workman was removed from service because he could not produce certificate of his eye sight and fitness from the Chief Medical Officer. The workman was sick and he sent medical certificates from a private doctor which were not acceptable to the management.

The concerned workman as WW-1 stated that he used to work as a weighman. He did not remember when he fell sick after removal of his service. He had sent applications for his sick leave. He had sent Ex. W-1 to W-9 applications and medical certificates. Ex. W-10 was letter of transfer. A complaint to S.D.M. was Ex. W-11. Ex. W-13 was application sent to S.D.M. Balabgarh. He had also sent copies of the same to Chief Minister, Haryana and Deputy Commissioner, Gurgaon. He was removed from service during sickness. He sent a demand notice Ex. W-21 by registered post. Report of Conciliation Officer was Ex. W-24. Ex. W-5 was copy of fitness certificate. Ex. W-26 was copy of letter of extension of leave. Ex. W-28 was copy of medical certificate. In cross examination he stated that his eldest son was 40 years old. His age was 70 years. He admitted that the cause of illness was his age. He knew Urdu and little Hindi. He had forgotten even Urdu due to his illness. He remains sick. He accepted that all his letters were written by others.

The learned representative for the workman argued that the services of the workman were terminated illegally. He remained on sick leave and submitted medical certificate.

I find from document Ex. M-5 that the workman was reinstated,—vide letter dated 21st August, 1978 on production of a fitness certificate from Government Hospital Faridabad which he produced and was Ex. M-2. By letter Ex. M-6 he was posted to work at Usha Spinning and Weaving Mills branch. Ex. M-7 is a report from M/s. Usha Spinning and Weaving Mills branch that the workman was absent on 13th October, 1978 and 14th October, 1978. Ex. W-1 is an application that the workman was sick w.e.f. 13th October, 1978 and was advised rest for 4 weeks. There is a note below the letter that it was being sent by registered post because the management refused to accept the application. Ex. W-6 is copy of another letter extension for leave. Ex. W-17 a copy of letter Ex. M-8. is letter from the management advising him to present himself before the Chief Medical Officer, Gurgaon for medical check up and produce certificate in connection of his sickness. It is also written that if no certificate was produced within a week his services were liable to be terminated. This letter was dated 3rd November, 1978. Services of the workman were terminated,—vide letter Ex. M-9 which was dated 21st December, 1978. It was written that he failed to comply with the instructions given in the letter dated 21st December, 1978.

I have gone through oral and documentary evidence led by the parties and find that the workman was appointed as helper. He remained sick for a considerable period and the management asked him to furnish certificate from Chief Medical Officer of the District. This was not produced. I find that according to the concerned workman he was 70 years old. He was continuously sick and he considered his age the reason for his illness. The concerned workman was a helper given the duty of a weighman. This job was a hard job and could not be performed by an oldman with sickly feeble physique. No doubt there were no rules prescribing age of superannuation but the employer to keep his business running needs able bodied workman. In the instant case the workman was asked to furnish a certificate from the Chief Medical Officer but the workman did not produce any. According to the file he has remained sick for a longer period and was unable to perform his duty. I do not find any illegality or malafide in the action of the management in asking the workman to present himself before the Chief Medical Officer. Therefore, this issue is decided in favour of the management.

While answering the reference, I give my award that the termination of services of the workman was justified and in order. The workman is not entitled to any relief.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 6th January, 1982.

No. 53, dated 15th January, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 25th March, 1982

No. 9(1)82-8Lab/2168.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Free Wheels (India) Ltd., Industrial Area, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL HARYANA, FARIDABAD

Reference No. 15 of 1981

between

SHRI RAM KISHORE WORKMAN AND THE MANAGEMENT OF M/S FREE WHEELS (INDIA) LTD., 57, INDUSTRIAL AREA, FARIDABAD

Present :

Shri S.R. Gupta for the workman.

Shri R.N. Rai for the management.

AWARD

By order No. ID/FD/97-80/4235, dated 23rd January, 1981 the Governor of Haryana referred the following dispute between the management of M/s Free Wheels (India) Ltd., 57, Industrial Area, Faridabad and its workman Shri Ram Kishore, to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Ram Kishore was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were issued to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed on 3rd April, 1981 :—

(1) whether the reference is pre-mature ?

(2) whether the workman lost his lien ?

(3) whether the termination of services of Shri Ram Kishore was justified and in order ? If not, to what relief is he entitled ?

The management examined Shri V.P. Singhal, Personnel Officer as MW-1 and the workman examined himself as his own witness. Arguments were heard. Now I give my finding issue-wise:—

Issue No. 1.—The contention of the management was that on the date of demand notice i.e. 10-7-80 name of the workman still existed on the rolls of the management. His name was removed on 16-8-80 after which he did not issue any demand notice. But the contention of the workman was that he was not allowed duty by the management on 26-6-80 when he went there with a fitness certificate. He relied upon Ex. W-2 copy of his complaint to the Labour Inspector which was dated 5-7-80 and the same was also to the fact that the management refused his duty on 26-6-80 and he offered letter of extension to the Personnel Officer Shri V.P. Singhal. In these circumstances, there was a dispute over the non-employment of the workman at the time of raising the demand. It could not be within the knowledge of the workman that his name still existed in the records of the management. I do not find that the demand notice was pre-mature and the reference bad. I decide this issue against the management.

Issue Nos. 2 and 3.—These issues are interlinked, therefore, taken together. MW-1 stated that in the attendance record the workman was on leave from 9-5-80 to 23-5-80. He had gone after sanction of leave. He produced Ex. W-1 and W-2 extract from the attendance record. He further deposed that the workman was on medical leave upto 7-6-80 but he did not report for duty later on. Ex. M-3 and M-4 were the copies of attendance record. The workman was marked absent upto 16-8-80 and his name was removed. On 17-8-80 Ex. M-5 and M-6 were photo copies of medical certificate. Two letters were sent to the workman. Letter Ex. M-7 was received by him, whereas other letter under UPC was received back undelivered which was Ex. M-8. Another letter was sent to him on 1-7-80 copy of which was Ex. M-9. The workman replied the same,—vide Ex. M-10. This letter was again replied on 18-7-80, vide management letter Ex. M-11, but it was received back undelivered and was Ex. M-12. He further deposed that during the same period a letter was received from the Labour Inspector and he had asked the Labour Inspector that the workman may be sent on duty and he was to submit explanation for absence but the workman did not report for duty. The workman was informed about striking of his name,—vide Ex. 13. Copy of certified Standing Orders was Ex. M-14. In cross-examinations

he replied that the workman was in the employment since 1976. His appointment letter was Ex. M-15. He admitted that the workman had come to the factory on 26th June, 1980 along with fitness certificate. But he was asked to explain his absence and the workman went away along with the certificate. He admitted it as correct that the workman was not taken on duty on that date. He also admitted that the Labour Inspector had called the management on 3rd July, 1980. He had told the Inspector that the workman was to explain his absence in writing so that he may be taken on duty. He denied the suggestion that the refused to receive letter Ex. M-10. He also denied that the workman reported for duty on 5th July, 1980 and he was not taken on duty. He denied the suggestion that letter Ex. M-7 was not sent to the workman. He admitted that in the Standing Orders there was a provision of striking off name after 3 days absence but the name of the workman was kept on rolls for two months because the matter was in conciliation.

WW-1 stated that he joined service on 21st February, 1969. He had gone on leave for 15 days but fell ill and informed about the illness to the management. He came to the factory along with fitness certificate. He was informed by Shri V.P. Singhal that his name had been struck off and in case he was willing to serve he can be re-employed. He submitted complaint Ex. W-1 letter Ex. M-9 was received by him but he was not taken on duty. He wrote letter Ex. M-10 to the management and letter Ex. W-2 to the Labour Inspector. Thereafter he submitted his demand notice. He did not receive any letter from the management when he was at his home. He never received letter Ex. M-13 from the management. In cross examination he admitted that he got re-employment in 1975. He had earlier resigned from the job. He denied that Shri Singhal had asked him to give explanation for his absence when he reported for duty on 26th June, 1980. He also denied the suggestion that after the complaint to the Labour Inspector the management had asked him to submit his explanation.

The learned representative for the management contended that the workman remained absent and did not submit any explanation for his absence. His name was removed under clause 13(F) of the Certified Standing Orders which was statutory condition of service. He cited 1961-62 FJR page 522. On the other hand the learned representative for the workman argued that the workman was admittedly on sick leave and he came for duty with a fitness certificate which was admitted by MW-1. He pointed out that it was unnecessary for the management to insist on an explanation in such a situation when it was well within its knowledge that the workman was on sick leave and he submitted his fitness certificate declaring him fit for duty. He also pointed out that the workman made a complaint to the Labour Inspector and when he was not taken on duty he was rightly advised by him to submit a demand notice. As regards striking off name the learned representative argued that striking off name amounted to retrenchment. He cited 1978 ILLJ page 1 1979 ILLJ 257, 1976 ILLJ page 478 and 1980 II LLJ page 72 argued that the action of the management in striking off the name amounted to retrenchment which was bad if section 25(F) was not complied.

I have considered the arguments and gone through the evidence. I find that it is admitted fact that the workman was on sanctioned sick leave. He reported for duty along with fitness medical certificate for duty on 22nd June, 1980. As regards the other contention that he did not submit any explanation for absence, I do not find what kind of explanation was further required when the workman was declared fit to join duty by his Doctor. It was also admitted that the workman made a complaint to the Labour Inspector but he was not taken on duty on the same pretext. It was held in 1978 ILLJ page 1 that striking off the name amounts to termination and retrenchment. In 1979 ILLJ page 257 it was held "Abandonment by workmen is always a question of fact, in the instant case, there was, on facts, no abandonment of service on the part of the appellants, and the management by imposing unilaterally a new term of employment, cannot convert the absence into abandonment of employment." In 1980 II LLJ page 72 the Hon'ble the Supreme Court dis-

cussed 1978 ILLJ page I and held that "the definition of sretrenchment included the termination by the employer of the service of a workmen for any reason what so ever and defined the term retrenchment in which, I find that the present case also falls. There is no proof of compliance of section 25(F) although the workman had a service of more than one year at his credit and the case did not fall under any of the exception of section 2(00) of the I.D Act, nor was a case of misconduct. Therefore both the issues are decided against the management.

While answering the reference, I give my award that the termination of services of the workman was neither justified, nor in order. The workman is entitled to reinstatement with continuity of service and with full back wages.

Dated 24th February, 1982.

M.C. BHARDWAJ,

Presiding Officer, Industrial,
Tribunal Haryana Faridabad.

No. 202, dated 24th February, 1982.

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Act, 1947.

M. C. BHARDWAJ,

Presiding Officer, Industrial
Tribunal Haryana, Faridabad.

No. 9(1)82-6Lab/4276.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Steel and Steel Fabrication Plot No. 291 Sestor 24, Faridabad

BEFORE SHRI M. C. BHARDWAJ PRESIDING OFFICER INDUSTRIAL
TRIBUNAL, HARYANA FARIDABAD

Reference No. 144/1981.

Between

SHRI KALLEY RAM WORKMAN AND THE MANAGEMEMENT OF M/S SEEEL AND STEEL
FABRIATION, PLOT NO. 291, SECTOR 24, FARIDABAD.

Presents.—

Shri Amar Singh Sharma for, the workman

Shri K.P. Aggarwal for the management.

AWARD

The State Government of Haryana referred the following dispute between workman Shri Kalley Ram and the management M/s Steel and Steen Fabrication, Plot No. 291, Sector-24, Faridabad, by order No. ID/FD/87/80/24248 dated 14th May, 1981. to this Tribunal, for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947:—

Whether the termination of services of Shri Kalley Ram was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties who appeared and filed their pleadings. On the pleadings, the following issues were framed by my order dated 6th October, 1981:—

- (1) Whether there is no Industrial Dispute between the parties.
- (2) Whether the workman concerned has received his dues in full and final settlement?
- (3) Whether the termination of services of Shri Kalley Ram was justified and in order? If not to what relief is he entitled?

The case was fixed for the evidence of the management who examined Shri V.B. Guleti managing partner as MW-land closed its case. The workman examined himself and closed his case. Argument heard.

Issue No. 1.

The demand was raised on 16th May, 1980 and the reference was made under section 2-(A) of the Industrial Disputes Act. The management has got settled the dispute with the concerned workman during the pendency. I do not find as to how it was not an industrial dispute.

Issue No. 2.

MW-1 deposed that the concerned workman re-joined service in February, 1975. He left the job after receiving his full account,—vide voucher Ex. M-2 and he again joined the service,—vide Ex. M3 which bore the signatures of workman and witness. The concerned workman remained absent in April, 1980. A registered letter dated 11th April, 1980 was sent to him which Ex. M-4. The workman did not re-joined his duties. Therefore another letter Ex. M5 was sent to him by registered post on 20th April, 1980. The postal receipt of the same was Ex. 6. The workman did not re-join his duties and collected his full account on 30th April, 1980 and he received a sum of Rs 1170,—vide Ex. 9. In cross examination, he replied that the concerned workman had not given any application for payment of his final account. He admitted that he knew about the pendency of his dispute of the concerned workman with the Labour Department. On 30th April, 1980, the workman received payment from him. At that time Shri R.K. Sharma time keeper was present. He denied the suggestion that the management got blank voucher signed by the workman. He also denied that the workman was present in the month of April, 1979 and he was shown absent. He also denied that voucher Ex. M-8 and M-9 were prepared by the management and no amount was paid by the management.

The concerned workman stated that he had joined this factory in 1966. He showed his group photo-graphs with the management and other workers. He further deposed that the management used to get the signatures on the blank papers. He never received Ex. M-8 and M-9 and he was not present at Faridabad on 30th April, 1981. purchased buffalo from a village in Mathura on that date. His service was terminated for union activities. In cross examination, he replied that the group photo was of the factory when it was located in Sector 24. He was president of the union but he had no proof to show the same. He denied the suggestion that his name was removed for his absence. He also denied that he joined the service of the management at three different times after receiving his full claim of the past service. He admitted his signatures on Ex. M-3, M-4, M-5 and M-6. He also admitted his signatures on Ex. M-1, M-8 and M-9 but stated that he used to receive the advance from the management and at that time, he signed blank vouchers. He never made complaint about signing of blank vouchers in his case. The version of the management was that the workman has received his settlement account while the workman denied having received any payment in his statement. The workman admitted his signatures on vouchers Ex. M-1, M-4 M-8 and M-9. In such circumstances, the burden of non-receipt payment or signing blank vouchers was shifted on the workman when he admitted the signature on the documents. The workman produced Ex. 3, a receipt of purchase of a buffalo from his village Baiden Kalan, Police Station Kosbi on 30th April, 1981. In case I believe the document, it was possible to come to Faridabad on the same date from above said village as distance was not such to deter the workman for travelling this distance. If I find from the vouchers Ex. M-8 and M-9 that the workman received a compensation and notice pay in addition to his other legal dues. The vouchers were stamped and signed by the workman which he admitted.

I have no reason to dis-believe the management and hold that the vouchers were prepared on presigned blank vouchers which was alleged by the workman. This issue is, therefore, decided in favour of the management.

Issue No. 3.

As per findings given by me on issue No. 2, this issue needs no decision.

While answering the reference, I given my award that the case of Shri Kalley Ram falls on issue No. 2 and he is not entitled to any relief in this reference. I order accordingly.

Dated the 16th April, 1982.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana, Faridabad.

Endst. No. 402, dated the 22nd April, 1982

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal Haryana, Faridabad.